APPEAL OF PRISONER

CF0000066019

Cr.A - 531/04.

(2)

No. 92/04 Name सोमार साय

Father's name सुरखना कोरवा

Residence ग्राम-गोविंदपुर थाना-बाँकी Age 26 वर्ष

Sentenced सत्र प्र० क्र० 260/03 धारा-376 भा०दं०वि० On 2/6/2004

Under section सात वर्ष अर्थदंड-2000/- या दो माह by माननीय न्यायालय सत्र न्यायाधीश अम्बिकापुर सरगुजा

it is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appeliate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with-in seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practiotioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

रेजि०

1. Date of Application for copy of Judgement 2/6/2004
2. Date of which copy received 3/6/2004
3. Date on which appeal sent 12/6/2004
4. Whether the prisoner wished to be represented or not-Yes/No.

No. 92/2004 Name सोमार साय आ० सुरखना कोरवा

Continued in केन्द्रीय Jail अम्बिकापुर

No. 3273 Dated 12.6.04 199

Forward to the ~~CHIEF JUDICIAL MAGISTRATE~~ एडिशनल रजिस्ट्रार (न्यायिक) उच्च न्यायालय बिलासपुर छ०ग०

to gather which a copy of order passed in the case for favour of transmission to the proper Appelliate Court.

संलग्न:-निर्णय पत्रिलिपि-6 (छः) पन्ने।

Superintendent

Superintendent
Central Jail, Ambikapur

Date of receipt in C.J.M's Office

Date of receipt record to accompany

Memo of Appeal of the Appeliate Court

No. Dated 199

Forwarded to the

C.J. Magistrate

Date of receipt in Appeliate Court

//SURGUJA TY.//

* * *

High Court of Chhattisgarh
BILASPUR
16 JUN 2004
Reg. No. 129
Receipt Clerk
High Court, Bilaspur

आदेश पत्रक

मामला क्रमांक Cr.A.No-531/04 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

SB: HON'BLE SHRI DHIRENDRA MISHRA,J.

APPELLANT Somarsai, S/o Sukhana

VERSUS

RESPONDENT State of Chhattisgarh

25-10-2007

Shri Abhay Tiwari, Advocate for the appellant.

Shri Sandeep Yadav, Dy. Govt. Adv. for the State.

2. This appeal is directed against the judgment of conviction and order of sentence dated 2nd June, 2004 passed in S.T. No. 260/2003 whereby learned Sessions Judge, Ambikapur has convicted the appellant under Section 376 of I.P.C. and sentenced him to undergo R.I. for 7 years, to pay a fine of Rs. 200/- and in default of payment of fine to further undergo S.I. for one month.

3. Briefly stated the case of the prosecution is that on the date of incident i.e. 12-4-2003, the prosecutrix aged 18 years old was in her house and her husband Tejram had gone to Jashpur. At about 6-7 pm, wife of the accused namely Gayatri went to the house of the prosecutrix and called her to her home. At that time, Sumitri, sister in relation of the prosecutrix also accompanied her to the house of accused. Accused Somarsai turned his wife out of the house after beating her and confined the prosecutrix and Sumitri inside his house whereupon the prosecutrix raised alarm. Hearing her shouts, Sukhani Bai (P.W. 4) came to the house of the accused and rescued the prosecutrix, however in the night around 10-11 pm, the accused

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went to the house of Sukhani Bai and dragged the prosecutrix from her home despite resistance from the prosecutrix and raped her. The matter was narrated by the prosecutrix to Sukhani Bai and others in the morning. She also narrated the incident to her husband after his return. Report of the incident was lodged on 14-4-2004 vide Ex. P-1 at about 11.30 hrs. The prosecutrix was sent for medical examination to District Hospital, Ambikapur where Dr. Shashiprabha Jaiswal (P.W. 7) examined her and gave her report of Ex. P-4. The wearing apparels of the prosecutrix were also taken into possession during investigation and the same were sent for opinion of the doctor regarding presence of semen and the opinion of the doctor is Ex. P-5. Vaginal slides of the prosecutrix and her petticoat were sent for medical examination to F.S.L., Raipur and the report is Ex. P-12. After completing investigation, charge sheet was filed against the appellant in the Court of Judicial Magistrate First Class, Ambikapur.

4. During trial, the prosecution examined 10 witnesses in all. Thereafter statement of the accused was recorded under Section 313 of Cr.P.C. in which he pleaded innocence and false implication. However the trial Court after hearing the learned counsel for the respective parties has convicted and sentenced the appellant as mentioned above.

5. Learned counsel for the appellant submits that the conviction of the appellant is based on the statements of the prosecutrix (P.W. 1), Sukhani Bai (P.W. 4) and Sumitri (P.W. 10). He further argued that the version given by the witnesses during trial are interse

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contradictory and highly improbable. From the evidence available on record, it can be inferred that the prosecutrix was a consenting party. Allegation against the appellant is that firstly he confined the prosecutrix in his house around 6 to 7 pm however she was rescued by Sukhani Bai. Thereafter she was again dragged from the house of Sukhani Bai at 12.00 in the night in presence of Sukhani Bai. She unsuccessfully tried to stop the accused however, the accused forcibly dragged her, confined to his house and committed rape after confining her for whole night and no attempt was made by Sukhani Bai to free the prosecutrix from the clutches of the accused. Whole story is highly improbable. The prosecutrix is a grown up lady, there is no internal or external injury on the person of the prosecutrix as is evident from the report of the doctor which belies the allegation that she was forcibly dragged by the accused.

6. On the other hand, learned counsel for the State supporting the impugned judgment submits that the testimony of the prosecutrix is corroborated by the statement of P.W. 4 Sukhani Bai as also from the statement of P.W. 10 Sumitri. Her statement is also corroborated by the statement of P.W. 2 Tiburam who is next door neighbour of the accused.

7. I have heard the learned counsel for the parties. I have perused the impugned judgment as also the evidence available on record.

8. P.W. 1 Prosecutrix has stated in her deposition that on the date of incident, she was alone in her house when at about 6 pm Gayatri

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Bai, wife of the appellant took her to her home. When she reached the house of Gayatri, the appellant turned her wife out after beating her and confined her in his home and did not open the door despite her repeated request. Hearing her shouts her aunt Sukhani came there and asked the accused to open the door. Initially the accused refused to open the door however, after some time, he opened the door and she took the prosecutrix to her house and she slept there. Around 10.00 to 11.00 in the night the accused came to Sukhani Bai's house and forcibly dragged her to his house and raped her. After the incident, she went to the house of Sukhani and narrated the incident. Her husband came back on Sunday and she narrated the incident to her husband also and lodged the report of Ex. P-1. She has admitted that P.W. 2 Tibu Ram and her family members, wife children, brother, brother's wife, all reside adjacent to the house of the appellant and if one shouts in the house of the appellant, it would be audible from the house of Tiburam. Omissions regarding arrival of aunti twice, opening the door, throwing the prosecutrix on the ground, raising alarm at the time of incident have been pointed out in her cross-examination by the defence. In para 5 of the statement, she has admitted that her husband returned at about 8.00 – 9.00 a.m. on Sunday. She has admitted in para 6 that when she went with the wife of the accused, Sumitri also accompanied her and the age of Sumitri is 16 years.

9. P.W. 4 Sukhani has stated that the husband of the prosecutrix had gone to Jashpur on the date of incident. She was alone in her

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house. Wife of the prosecutrix came to call the prosecutrix whereupon the prosecutrix and her daughter Sumitri went with her. The accused locked the prosecutrix in his house and turned his wife out of his house after beating her. After hearing the shouts of the prosecutrix, she went to the house of the accused and forcibly entered and brought the prosecutrix to her home around 5.00 to 6.00 pm. At about 12.00 in the night, the accused came to her house and dragged the prosecutrix after threatening her of her life. The prosecutrix was shouting. The accused also threatened her (Sukhani) not to raise alarm. In the morning, the prosecutrix came to her home and told her that the accused forcibly raped her. The omissions regarding coming of the accused to her house in the night and threatening her, her daughter Sumitri accompanying the prosecutrix along with Gayatri, wife of the accused, etc. have been pointed out however, this witness has stated that she had narrated the above fact to the police at the time of giving diary statement and she is unable to give the reason why these facts are missing in her diary statement.

10. P.W.10 Sumitri has stated that she accompanied the prosecutrix to the house of Gayatri. The appellant turned his wife out of his house after beating her and locked the prosecutrix in his house. Sukhani Bai came there and took them to her house. However in the night, the appellant again dragged the prosecutrix, her sister to his house who returned in the morning and told them that the accused had raped her. In the cross-examination, this witness has admitted that in the night when the accused was dragging her sister,

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at that time the prosecutrix had asked her not to disclose this fact to mother and others. She has also admitted that when the prosecutrix was being dragged by the accused, at that time her mother was not awoke and it is correct to say that her mother was not aware of the fact that the accused had taken the prosecutrix in the night. She has further admitted that at the time of taking the prosecutrix in the night, the accused did not threaten the prosecutrix and she has stated that when her sister returned in the morning, then she narrated that Somarsai had taken her in the night.

11. Dr. Shashi Prabha Jaiswal (P.W. 7) who has examined the prosecutrix has stated that she did not notice any external injury over the person of the prosecutrix. There were no injuries present over her private parts and she was not complaining pain. She was menstruating at the time of examination and no definite opinion about recent intercourse could be given. Dr. G.R. Kurre (P.W. 6) has examined the accused and given report of Ex. P-3 and he has only stated that the appellant was capable of performing sexual intercourse.

12. After close scrutiny of the evidence of these witnesses, it is observed that all the three witnesses i.e. the prosecutrix (P.W. 1), Sukhani (P.W. 4) and Sumitri (P.W. 10) claimed that the prosecutrix was first time taken to the house of the accused by the wife of the accused Gayatri at about 6.00 p.m. and there Sumitri and the prosecutrix were confined by the accused and Sukhani after hearing the shouts of the prosecutrix went to the house of the accused and

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	rescued the prosecutrix and Sumitri Bai, however, this important fact is missing from the diary statement of Ex. D-3 of Sukhani Bai. The prosecutrix has stated that around 10.00 to 11.00 pm the accused again came to the house of Sukhani Bai and forcibly dragged her to his house and raped her. She does not state that at that time, Sukhani Bai was awoke and she tried to intervene and she was threatened by the accused whereas Sukhani Bai in her deposition has claimed that when the accused came in the night at about 12.00 and was dragging the prosecutrix forcibly, he also threatened her (Sukhani) not to raise alarm, on the other hand, P.W. 10 in her cross-examination has categorically stated that when the prosecutrix was being dragged, her mother was not awoke and she was not aware of the incident of the night that the accused had taken the prosecutrix. Apart from the above discrepancy, if the version of the Sukhani is accepted, in that case, it is highly improbable that the prosecutrix was taken from her home forcibly by the accused, even then she did not disclose this fact to other persons of the village and did not try to make any effort to rescue the prosecutrix immediately thereafter. The above fact attains significance in the light of the fact that P.W. 2 Tiburam, who resides adjacent to the house of the accused along with his brother and wife, also made no effort to rescue the prosecutrix while she was in the confinement in the house of the accused. If the above discrepancy is viewed in the background of the admission of the P.W. 10 Sumitri who has stated that when her sister (prosecutrix) was being dragged by the accused, at that time, she had asked her not to disclose this fact to mother and that while	

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the prosecutrix was going with the accused, the accused did not threat her, attains significance. From the spot map of Ex. P-8, it appears that the place where the prosecutrix was sleeping in the night of the incident and from where she was dragged and the house of the accused is at a distance of 100 meters, absence of injuries over the person of the prosecutrix who was dragged for a distance of 100 meters also makes the defence of the accused more probable that the prosecutrix might be a consenting party. So far as the positive F.S.L. report is concerned, the prosecutrix is a married lady, she was examined by the doctor only on 14th April, 2003 i.e. two days after the incident after her husband had already come back and therefore, presence of human sperm in the slides or wearing apparels of the prosecutrix is of no consequence.

13. The husband had returned on Sunday in the morning at about 8.00-9.00 a.m. however the report was lodged only on the following day at 11.30 a.m. and there is no explanation for the delay in lodging report and that also makes the case of the prosecution doubtful.

14. In view of the above discussion, the conviction of the appellant under Section 376 of I.P.C. and sentence imposed under that section cannot be sustained.

15. In the result, the appeal is allowed. The impugned judgment is set aside. The appellant is acquitted of the above charge. He is in jail. He be set at liberty forthwith if not required in any other case.

Sd/-
Dhirendra Mishra
Judge

P/-

[पीछे देखिये